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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,992	01/22/2004	Mark Zieff	30394-101	5992

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EXAMINER

NGUYEN, TRINH T

ART UNIT PAPER NUMBER

3644

DATE MAILED: 02/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,992

Applicant(s)

ZIEFF ET AL.

Examiner

Trinh T Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/15/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-5, and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Walter et al. (US 5,682,835).

For claim 1, Walter et al. disclose a squirrel proof bird feeder, comprising: (a) a base (52); (b) one or more feeding chambers (50a, 50b, 50c), wherein one end of said chambers are securely affixed to said base; (c) a top locking device (see Figure 5 attached at the end of this Office Action), wherein an end of said chambers opposite to said base are securely disposed within said top locking device; and (d) a guard (see Figure 5 attached at the end of this Office Action) that is disposed along a surface of said top locking device, wherein said guard has one or more guard units, wherein units in apposition are securely adjoined to one another, and wherein said guard extends beyond a feeding chamber so as to prevent said squirrel from accessing said feeding chamber.

For claim 3, Walter et al. disclose said one or more feeding chambers comprise three feeding chambers (50a, 50b, 50c).

For claim 4, Walter et al. disclose said one or more feeding chambers further comprise one or more portals (see Figure 5 attached at the end of this Office Action).

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For claim 5, Walter et al. disclose said portals have disposed thereon a perch.

For claim 7, Walter et al. disclose a dome (66), wherein said dome covers the top of said feeding chambers.

For claim 8, Walter et al. disclose said dome is independent of said guard.

For claim 9, Walter et al. disclose said dome is part of said guard (note that once the dome is connected to the guard then the dome is part of the guard).

For claim 10, Walter et al. disclose said guard is removably disposed on said feeder.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walter et al. (US 5,682,835).

As described above, Walter et al. disclose most of the claimed invention except for indicating that the one or more guard units comprise three individual units.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the feeder of Walter et al. so as to include a guard unit comprises three individual units, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Furthermore, note that in lines 1-2 of page 4 of the specification, applicant

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stated that "The guard of the current invention is formed by one or more guard units..."; therefore, it is noted that the guard can be formed by one piece or multiple pieces since applicant has stated that the guard can be formed either way (i.e. by one piece or multiple pieces).

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walter et al. (US 5,682,835) in view of Applicant's Admitted Prior Art (as set forth in lines 10-11 of page 4 of the specification; hereinafter is referred to as AAPA).

As described above, Walter et al. disclose most of the claimed invention except for indicating that the chambers are securely affixed to the base via a snap-fit mechanism.

AAPA teaches that it is old and well known to use a snap-fit mechanism as a means for removably joining two structural members together. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the feeder of Walter et al. so as to include the use of a snap-fit mechanism, in light of AAPA's teaching, in order to provide a more flexible means of joining/attaching (i.e. snap-fit mechanism) wherein it allows the two joining members to be removably joined together.

Response to Arguments

6. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T Nguyen whose telephone number is (703) 306-9082. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

The examiner's supervisor, Teri Luu can be reached on (703) 305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T Nguyen
Patent Ex.
Art Unit 3644
2/22/05

